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Agenda item 74 (b)

**Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms**

**Austria, Belgium, Brazil, Cyprus, Finland, Germany, Honduras, Hungary, Liechtenstein, Luxembourg, Mexico, Netherlands, Paraguay, Slovenia, Spain and Switzerland: draft resolution**

## The right to privacy in the digital age

*The General Assembly*,

*Reaffirming* the purposes and principles of the Charter of the United Nations, the human rights and fundamental freedoms enshrined in the Universal Declaration of Human Rights[1] and relevant international human rights treaties, including the International Covenant on Civil and Political Rights[2] and the International Covenant on Economic, Social and Cultural Rights,[2] as well as the Vienna Declaration and Programme of Action,[3]

*Recalling* General Assembly resolutions 68/167 of 18 December 2013, 69/166 of 18 December 2014 and 71/199 of 19 December 2016 on the right to privacy in the digital age, and resolution 45/95 of 14 December 1990 on guidelines for the regulation of computerized personal data files, as well as Human Rights Council resolutions 28/16 of 26 March 2015[4] and 34/7 of 23 March 2017[5] on the right to privacy in the digital age and resolutions 32/13 of 1 July 2016[6] and 38/7 of 5 July 2018[7] on the promotion, protection and enjoyment of human rights on the Internet,

[1] Resolution 217 A (III).

[2] See resolution 2200 A (XXI), annex.

[3] A/CONF.157/24 (Part I), chap. III.

[4] See *Official Records of the General Assembly, Seventieth Session, Supplement No. 53* (A/70/53), chap. III, sect. A.

[5] Ibid., *Seventy-second Session, Supplement No. 53* (A/72/53), chap. IV, sect. A.

[6] Ibid., *Seventy-first Session, Supplement No. 53* (A/71/53), chap. V, sect. A.

[7] Ibid., *Seventy-third Session, Supplement No. 53* (A/73/53), chap. VI, sect. A.

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*Welcoming* the outcome document of the high-level meeting of the General Assembly on the overall review of the implementation of the outcomes of the World Summit on the Information Society,[8]

*Welcoming also* the reports of the Special Rapporteur of the Human Rights Council on the right to privacy[9] and the reports of the Special Rapporteur of the Human Rights Council on the promotion and protection of the right to freedom of opinion and expression,[10]

*Welcoming further* the work of the Office of the United Nations High Commissioner for Human Rights on the right to privacy in the digital age, noting with interest the report of the High Commissioner thereon,[11] and recalling the panel discussion on the right to privacy in the digital age held during the twenty-seventh session of the Human Rights Council,

*Noting* that the rapid pace of technological development enables individuals all over the world to use new information and communications technologies and at the same time enhances the capacity of Governments, companies and individuals to undertake surveillance, interception and data collection, which may violate or abuse human rights, in particular the right to privacy, as set out in article 12 of the Universal Declaration of Human Rights and article 17 of the International Covenant on Civil and Political Rights, and is therefore an issue of increasing concern,

*Noting also* that violations and abuses of the right to privacy in the digital age may affect all individuals, including with particular effects on women, as well as children, persons in vulnerable situations and marginalized groups,

*Recognizing* that the promotion of and respect for the right to privacy are linked to the prevention of violence against women and girls, including sexual harassment, which occurs in digital and online spaces and includes cyberbullying and cyberstalking,

*Reaffirming* the human right to privacy, according to which no one shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, and the right to the protection of the law against such interference, and recognizing that the exercise of the right to privacy is important for the realization of the right to freedom of expression and to hold opinions without interference and the right to freedom of peaceful assembly and association, and is one of the foundations of a democratic society,

*Noting with appreciation* general comment No. 16 of the Human Rights Committee on article 17 of the International Covenant on Civil and Political Rights, on the right to respect of privacy, family, home and correspondence, and protection of honour and reputation,[12] while also noting the vast technological leaps that have taken place since its adoption and the need to discuss the right to privacy in view of the challenges of the digital age,

*Recognizing* the need to further discuss and analyse, based on international human rights law, issues relating to the promotion and protection of the right to privacy in the digital age, procedural safeguards, effective domestic oversight and remedies, the impact of surveillance on the right to privacy and other human rights,

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[8] Resolution 70/125.

[9] A/HRC/34/60 and A/72/540.

[10] A/HRC/38/35 and A/73/348.

[11] A/HRC/39/29.

[12] *Official Records of the General Assembly, Forty-third Session, Supplement No. 40* (A/43/40), annex VI.

as well as the need to examine the principles of non-arbitrariness and lawfulness, legality, necessity and proportionality in relation to surveillance practices,

*Noting* the holding of the Global Multi-stakeholder Meeting on the Future of Internet Governance (NETmundial) and the multi-stakeholder discussions that take place annually in the Internet Governance Forum, which is a multi-stakeholder forum for discussions of Internet governance issues and whose mandate was extended by the General Assembly in 2015 for another 10 years,[8] and recognizing that effectively addressing the challenges relating to the right to privacy in the context of modern communications technology requires an ongoing, concerted multi-stakeholder engagement,

*Affirming* that this engagement is greatly facilitated by informal dialogues about the right to privacy among all relevant stakeholders,

*Emphasizing* that the protection and promotion of, and respect for, the right to privacy require the sustained engagement of all stakeholders, including governments, industry, civil society and international organizations,

*Recognizing* that the discussion on the right to privacy should be based upon existing international and domestic legal obligations, including international human rights law, as well as relevant commitments, and should not open the path for undue interference with an individual's human rights,

*Stressing* the importance of full respect for the freedom to seek, receive and impart information, including the fundamental importance of access to information and democratic participation,

*Recognizing* that the right to privacy is important for the enjoyment of other rights and the free development of an individual's personality and identity, and contributes to an individual's ability to participate in political, economic, social and cultural life, and noting with concern that violations or abuses of the right to privacy might affect the enjoyment of other human rights, including the right to freedom of expression and to hold opinions without interference, and the right to freedom of peaceful assembly and association,

*Noting* that, while metadata may provide benefits, certain types of metadata, when aggregated, can reveal personal information that can be no less sensitive than the actual content of communications and can give an insight into an individual's behaviour, social relationships, private preferences and identity,

*Expressing deep concern* that individuals often do not provide their free, explicit and informed consent to the sale or multiple resale of their personal data, as the collecting, processing, use, storage and sharing of personal data, including sensitive data, have increased significantly in the digital age,

*Noting* that big data, profiling and machine-learning technologies, sometimes referred to as artificial intelligence, without proper safeguards, may lead to discrimination or decisions that otherwise have the potential to affect the enjoyment of human rights, including economic, social and cultural rights, and recognizing the need to apply international human rights law to the design, algorithms, evaluation and regulation of these practices,

*Emphasizing* that unlawful or arbitrary surveillance and/or interception of communications, as well as the unlawful or arbitrary collection and processing of personal data, as highly intrusive acts, violate the right to privacy, can interfere with other human rights, including the right to freedom of expression and to hold opinions without interference and the right to freedom of peaceful assembly and association, and may contradict the tenets of a democratic society, including when undertaken extraterritorially or on a mass scale,

*Recognizing* that the same rights that people have offline must also be protected online, including the right to privacy,

*Noting in particular* that surveillance of digital communications must be consistent with international human rights obligations and must be conducted on the basis of a legal framework, which must be publicly accessible, clear, precise, comprehensive and non-discriminatory, and that any interference with the right to privacy must not be arbitrary or unlawful, bearing in mind what is reasonable and proportionate to the pursuance of legitimate aims, and recalling that States that are parties to the International Covenant on Civil and Political Rights must take the necessary steps to adopt laws or other measures as may be necessary to give effect to the rights recognized in the Covenant,

*Recognizing* that respecting the right to privacy contributes to the protection of individuals against the spread of disinformation and propaganda on the Internet, which can be designed and implemented so as to mislead, to violate and abuse human rights and to incite violence, hatred, discrimination or hostility,

*Emphasizing* that States must respect international human rights obligations regarding the right to privacy when they intercept digital communications of individuals and/or collect personal data, when they share or otherwise provide access to the data collected on the basis of cross-border intelligence-sharing agreements and when they require the disclosure of personal data from third parties, including private companies,

*Noting* the increase in the collection of sensitive biometric information from individuals, and stressing that States and business enterprises should respect the right to privacy, the right to the enjoyment of the highest attainable standard of physical and mental health and other human rights when collecting, processing, sharing and storing biometric information by, inter alia, implementing data protection policies and safeguards,

*Noting also* that general comment No. 16 recommends that States take effective measures to prevent the unlawful retention, processing and use of personal data stored by public authorities and business enterprises,

*Recalling* that business enterprises have a responsibility to respect human rights, as set out in the Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework,[13] and that the obligation and the primary responsibility to promote and protect human rights and fundamental freedoms lie with the State,

*Welcoming* measures taken by business enterprises, on a voluntary basis, to provide transparency to their users about their policies regarding requests by State authorities for access to user data and information,

*Deeply concerned* at the negative impact that surveillance and/or interception of communications, including extraterritorial surveillance and/or interception of communications, as well as the collection of personal data, in particular when carried out on a mass scale, may have on the exercise and enjoyment of human rights,

*Emphasizing* that, in the digital age, technical solutions to secure and to protect the confidentiality of digital communications, including measures for encryption and anonymity, can be necessary to ensure the enjoyment of human rights, in particular the rights to privacy, to freedom of expression and to freedom of peaceful assembly and association, and in this regard calling upon States to comply with their obligations under international human rights law and not to interfere with the use of such

[13] A/HRC/17/31, annex.

technologies, and to refrain from employing unlawful or arbitrary surveillance techniques, including through hacking,

*Noting with deep concern* that, in many countries, human rights defenders and journalists frequently face threats and harassment and suffer insecurity, as well as unlawful or arbitrary interference with their right to privacy, as a result of their activities,

*Noting* that, while concerns about public security may justify the gathering and protection of certain sensitive information, States must ensure full compliance with their obligations under international human rights law,

*Noting also*, in that respect, that the prevention and suppression of terrorism is a public interest of great importance, while reaffirming that States must ensure that any measures taken to combat terrorism are in compliance with their obligations under international law, in particular international human rights, refugee and humanitarian law,

*Recognizing* that an open, secure, stable, accessible and peaceful information and communications technology environment is important to the realization of the right to privacy in the digital age,

1. *Reaffirms* the right to privacy, according to which no one shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, and the right to the protection of the law against such interference, as set out in article 12 of the Universal Declaration of Human Rights[1] and article 17 of the International Covenant on Civil and Political Rights;[2]

2. *Recognizes* the global and open nature of the Internet and the rapid advancement in information and communications technologies as a driving force in accelerating progress towards development in its various forms, including in achieving the Sustainable Development Goals;[14]

3. *Affirms* that the same rights that people have offline must also be protected online, including the right to privacy;

4. *Recalls* that States should ensure that any interference with the right to privacy is consistent with the principles of legality, necessity and proportionality;

5. *Encourages* all States to promote an open, secure, stable, accessible and peaceful information and communications technology environment based on respect for international law, including the obligations enshrined in the Charter of the United Nations and human rights instruments;

6. *Calls upon* all States:

(a) To respect and protect the right to privacy, including in the context of digital communications;

(b) To take measures to put an end to violations of the right to privacy and to create the conditions to prevent such violations, including by ensuring that relevant national legislation complies with their obligations under international human rights law;

(c) To review their procedures, practices and legislation regarding the surveillance of communications, their interception and the collection of personal data, including mass surveillance, interception and collection, with a view to upholding the right to privacy by ensuring the full and effective implementation of all their obligations under international human rights law;

[14] See resolution 70/1.

(d) To establish or maintain existing independent, effective, adequately resourced and impartial judicial, administrative and/or parliamentary domestic oversight mechanisms capable of ensuring transparency, as appropriate, and accountability for State surveillance of communications, their interception and the collection and processing of personal data;

(e) To provide individuals whose right to privacy has been violated by unlawful or arbitrary surveillance with access to an effective remedy, consistent with international human rights obligations;

(f) To develop or maintain and implement adequate legislation, in cooperation with all relevant stakeholders, including civil society, with effective sanctions and remedies, that protects individuals against violations and abuses of the right to privacy, namely through the unlawful and arbitrary collection, processing, retention or use of personal data by individuals, Governments, business enterprises and private organizations;

(g) To adopt and implement comprehensive data protection legislation, including on digital communication data, that complies with international human rights law and to consider establishing independent authorities with powers to monitor State and private sector data privacy practices, investigate abuses, receive complaints from individuals and organizations, and provide remedies for the unlawful processing of personal data by private and public bodies;

(h) To further develop or maintain, in this regard, preventive measures and remedies for violations and abuses regarding the right to privacy in the digital age that may affect all individuals, including where there are particular effects for women, as well as children and those vulnerable and marginalized;

(i) To develop, review, implement and strengthen gender-responsive policies that promote and protect the right to privacy in the digital age of all people without discrimination;

(j) To promote quality education and lifelong education opportunities for all to foster, inter alia, digital literacy and technical skills for the protection of the right to privacy;

(k) To refrain from requiring business enterprises to take steps that interfere with the right to privacy in an arbitrary or unlawful way;

(l) To enable business enterprises to adopt adequate voluntary transparency measures with regard to requests by State authorities for access to private user data and information;

(m) To develop or maintain legislation, preventive measures and remedies addressing harm from the processing, use, sale or multiple resale or other corporate sharing of personal data without the individual's free, explicit and informed consent;

7. *Calls upon* business enterprises:

(a) To meet their responsibility to respect human rights in accordance with the Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework,[13] including the right to privacy in the digital age;

(b) To inform users in an intelligible and easily accessible way about the collection, use, sharing and retention of their data that may affect their right to privacy and to establish transparency policies, as appropriate;

(c) To ensure the lawfulness, fairness and transparency of data processing, limiting the purposes of processing, ensuring the legitimacy of such purposes,

minimizing data processing, limiting data storage and ensuring their accuracy, integrity and confidentiality;

8. *Encourages* business enterprises to work towards enabling secure communications and the protection of individual users against arbitrary or unlawful interference with their privacy, including by developing technical solutions;

9. *Encourages* all relevant stakeholders to participate in informal dialogues about the right to privacy, and welcomes the contribution of the Special Rapporteur of the Human Rights Council on the right to privacy to this process;

10. *Encourages* the Human Rights Council and the Office of the United Nations High Commissioner for Human Rights to remain actively seized of the debate, and invites all relevant stakeholders to further discuss how big data, automated decision-making and machine-learning technologies, sometimes referred to as artificial intelligence, have an impact on the enjoyment of the right to privacy, with the purpose of identifying and clarifying principles, standards and best practices regarding the promotion and protection of the right to privacy;

11. *Decides* to continue its consideration of the question at its seventy-fifth session.